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AUTHORITIES CITED

In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 470

THE UNITED STATES, APPELLANT

v.

JOHN J. MITCHELL ET AL., AS EXECUTORS OF THE Last Will and Testament of Dellora R. Gates, Deceased

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APPEAL FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The Memorandum Opinion of the Court of Claims is reported in 60 Ct. Clms. 451. (R. 46.)

GROUNDS OF JURISDICTION

The judgment to be reviewed was entered March 23, 1925. (R. 47.) Petition for appeal was filed April 21, 1925, and allowed May 4, 1925. (R. 47.) The jurisdiction of this Court is based on Sections 242 and 243 of the Judicial Code as they stood prior to the Act of February 13, 1925.

STATEMENT

The questions presented

This case presents two questions relating to the deductibility of taxes in the computation of net taxable income under the Revenue Act of 1918. One relates to the deduction of a Federal estate tax, and the other to a deduction of an inheritance tax imposed under the laws of Texas.

The deductibility of the Federal estate tax is admitted. The controversy relates to the year in which the deduction should be taken. The question is whether a Federal estate tax, liability for which accrued in 1919, but which was paid in 1920, may be deducted by executors from their gross income for the year 1919, in a case where their method of accounting and income-tax return was on a receipts and disbursements basis, as distinguished from the accrual basis.

With respect to the deduction of the inheritance tax paid to the State of Texas, there is no controversy about the year in which the deduction should be made, if it is to be allowed. The question is whether the Texas inheritance tax is deductible by the executors from the gross income of the estate, or whether the deduction is allowable to the legatees or distributees on their individual income-tax returns.

The Texas inheritance tax accrued and was paid in 1919, so that if deductible by the executors it

was deductible in that year, without regard to the basis on which their accounts were kept and their returns made.

The facts relating to deduction of Federal estate tax

Dellora R. Gates, a citizen of the United States, died November 28, 1918 (R. 41), leaving a will of which the appellees are executors. They brought this suit in the Court of Claims to recover income taxes on their income as executors for the year 1919, alleged to have been illegally assessed and collected, a claim for refund having been filed and denied.

The Federal estate tax on the decedent's estate became due one year after her death, on November 28, 1919. The Federal estate tax return was filed November 26, 1919, and the estate tax was actually paid in 1920. (R. 43.) The amount of the Federal estate tax paid in 1920 exceeded the gross income of the executors for the year 1919. (R. 42.) If the amount of the Federal estate tax had been deducted from the gross income of the executors for 1919, there would have been no net income and no income tax for the year 1919. The executors did not make the deduction and the income tax for 1919 actually paid was $905,225.73. (R. 43.) The deduction was not taken, because, prior to the decision, in 1921, of the case of *United States* v. *Woodward,* 256 U. S. 632, the Treasury Regulations forbade the deduction of a Federal estate tax.

After the decision in the *Woodward case,* holding that the Federal estate tax is a deductible item, the executors seasonably filed a claim for refund (R. 44), which was denied.

The Bureau of Internal Revenue offered to allow the executors to deduct the Federal estate tax from gross income for the year 1920, in which year the estate tax was paid.

The Court of Claims, on the supposed authority of *United States* v. *Woodward, supra* (R. 46), held that the Federal estate tax was deductible in computing taxable income for the year 1919, and awarded judgment to the executors for the difference between $905,225.73, the income tax paid for 1919, and an admitted offset (R. 5–6) in favor of the United States on account of unpaid income taxes for 1920 amounting to $381,931.57, the net amount of the judgment being $523,294.16 (R. 47).

The material portions of the Revenue Act of 1918 (Act of February 24, 1919, Title II, Chap. 18, 40 Stat. 1057, 1058–1088), are as follows:

> SECTION 212. * * *
>
> (b) The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be), in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income,

> the computation shall be made upon such basis and in such manner as in the opinion of the Commissioner does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year as defined in section 200 or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year. * * *

Section 214(a) (3), 40 Stat. 1067, provides in part as follows:

> (a) That in computing net income there shall be allowed as deductions: * * *
>
> (3) Taxes paid or accrued within the taxable year imposed (a) by the authority of the United States, except income, war profits, and excess-profits taxes; * * * (c) by the authority of any State or Territory, or any county, school district, municipality, or other taxing subdivision of any State or Territory, not including those assessed against local benefits of a kind tending to increase the value of the property assessed * * *.

Section 200, 40 Stat. 1059, provides, in part, as follows:

> * * * The term "paid," for the purposes of the deductions and credits under this title, means "paid or accrued" or "paid or incurred," and the term "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under section 212.

The method of accounting regularly employed by the executors in keeping their books is not clearly disclosed by the Record. We believe it will not be disputed that they kept their accounts on a receipts and disbursements basis, as distinguished from the accrual basis. Their return of taxable income for the year 1919 was on the receipts and disbursements basis. In their income tax return for 1919, in response to a question as to the basis on which the return was made, the executors stated that it was made on a receipts and disbursements basis. This return is found as Exhibit B to the petition and findings. (R. 36.) This exhibit, read with a magnifying glass, shows, near the top of page 36, the following instruction:

> Write " R " if this return shows income received or "A" if it shows income accrued.

Written in the space provided for the answer is, " R."

Facts relating to the Texas inheritance tax

During the year 1919 there became due and payable by the executors an inheritance tax imposed by the State of Texas, amounting to $357,739.34, which amount was, in fact, paid by the executors to the State of Texas May 27, 1919. (R. 45.) The statutes of the State of Texas under which these inheritance taxes were imposed and paid are set forth in an appendix to this brief. The taxes imposed under the Texas law were upon the amounts

of the legacies to various legatees, and the rate as to each legacy depended upon the amount of the legacy and the relationship between the decedent and the legatee. The inheritance taxes were not imposed upon the estate as a whole. It was made the duty of the executors to pay the inheritance taxes for the heirs or legatees.

Article 7494, Chap. 10, of Vernon's Sayles' Texas Civil Statutes, 1914, provides, with respect to the payment of legacies and distributive shares, that—

> If such property be in the form of money, the executor, administrator or trustee shall deduct the amount of the tax therefrom before paying it to the party entitled thereto; if it be not in the form of money, he shall withhold the property until the payment by such party of the amount of tax; in any case the executor, administrator or trustee shall be liable for the amount of the tax and shall have the right, in case of neglect or refusal after due notice of the party entitled to the property to pay such amount, to sell, at public sale, after due notice to such party, the property, or so much thereof as may be necessary. Out of the sum realized on such sale, the executor, administrator or trustee shall deduct the amount of the tax and the expenses of the sale, and shall pay the balance to the party entitled thereto.

If the executors are denied the right to deduct the Federal estate tax in 1919, and are also denied the right to deduct the Texas inheritance taxes,

they will not be entitled to recover anything in this case. If allowed to deduct the Federal estate tax, the consideration of the Texas inheritance tax matter is made unnecessary, and the judgment of the Court of Claims would have to be affirmed as rendered.

If the deduction of the Federal estate tax is disallowed, but the Texas inheritance tax is held to be deductible, the amount of income tax for 1919 paid by the executors will be found to be too large by the amount of $261,149.72 (R. 46; Finding XVII); and in that event the judgment of the Court of Claims should be reversed with directions to grant judgment to the executors for the amount last stated, less any offsets existing in favor of the United States.

SPECIFICATION OF ERRORS TO BE URGED

(1) The Court of Claims erred in holding that the Federal estate tax was deductible in computing net taxable income for the year 1919, which was the year in which liability for the Federal estate tax accrued, and erred in not holding that, under the Revenue Act of 1918, since the executors kept their accounts and made their return on a receipts and disbursements basis, as distinguished from an accrual basis, the deduction of the Federal estate tax should have been made in computing net taxable income for the year 1920, which was the year in which the estate tax was paid.

(2) If the decision of the Court of Claims be construed as holding that the amount of the Texas inheritance taxes were deductible by the executors rather than by the legatees and distributees, it was in that respect erroneous.

ARGUMENT

SUMMARY

I. The Revenue Act of 1918 provided that taxes were deductible from gross income in the year in which they accrued or in the year in which they were paid, depending upon whether the taxpayer kept his books and made his returns on an accrual basis or on a receipts and disbursements basis.

The findings show that the appellees kept their books and made their return on a receipts and disbursements basis.

It follows that the Federal estate tax was deductible by the executors in 1920, the year in which it was paid, and not in the year 1919, in which the liability may be said to have accrued.

II. The decision in *United States* v. *Woodward*, 256 U. S. 632, is not an authority against the position of the United States in this case.

III. The Texas inheritance taxes were charges and burdens upon the legatees and not upon the executors, and a deduction of the amount of the Texas inheritance taxes should be taken by the legatees in their individual returns, and is not one to which the executors are entitled.

I

AS THE EXECUTORS KEPT THEIR BOOKS AND MADE THEIR RETURN ON A RECEIPTS AND DISBURSEMENTS BASIS, THE FEDERAL ESTATE TAX WAS DEDUCTIBLE IN THE YEAR IN WHICH IT WAS PAID AND NOT IN THE YEAR IN WHICH THE LIABILITY ACCRUED

The deductibility of the Federal estate tax by the executors in computing their net taxable income is not a matter of dispute. That right was settled in *United States* v. *Woodward,* 256 U. S. 632.

The controversy here is with respect to the year in which the deduction should be taken.

As was pointed out in *United States* v. *Anderson,* decided January 4, 1926 (46 Supreme Court Reporter, p. 131; Nos. 337 and 340, present term), the Revenue Acts of 1909 and 1913 provided for returns on a receipts and disbursements basis. Recognizing that good accounting methods often require accounts to be kept on an accrual basis, the Revenue Act of 1916, while permitting returns on a receipts and disbursements basis, contained a new section, 13 (d), to the effect that a taxpayer keeping his accounts on any basis other than that of actual receipts and disbursements was allowed to make his return on the basis on which his accounts were kept. This allowed the taxpayer the option to make his return on a receipts and disbursements basis, without regard to how he kept his books, or, if he kept his books on the accrual basis, to use the accrual method as the basis for his return.

The Act of 1916 was considered in the case of *United States* v. *Anderson, supra,* in which it was held that if the taxpayer kept his books and made his return on an accrual basis he must be consistent and treat all items on the same basis.

The Revenue Act of 1918, under which this case arose, made one change in respect to the basis for computing the tax and clarified the situation. Under Section 212 (b) of the Revenue Act of 1918, it was provided that—

> The net income shall be computed * * * in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made upon such basis and in such manner as in the opinion of the Commissioner does clearly reflect the income.

This deprived the taxpayer of the option he had under the 1916 Act of making his return on a receipts and disbursements basis without regard to how he kept his books.

The 1918 Act required the taxpayer to make his return upon the basis employed in keeping his books. If he kept no books, or if his books were not properly kept to reflect income, the basis for the return and the computation of the tax was not one selected by the taxpayer, but one designated by the Commissioner.

The provision in Section 214(a) (3), of the 1918 Act allowed the deduction of " taxes paid or accrued within the taxable year."

Section 200 of the Revenue Act of 1918 provided that the term " paid or accrued " " shall be construed according to the method of accounting upon the basis of which the net income is computed under section 212."

These provisions are so clear as to require little discussion. The provision that taxes " paid or accrued " within the taxable year might be deducted within the taxable year did not mean that the deduction might be taken, at the option of the taxpayer, in any year in which the liability accrued or the taxes were paid. It meant that taxes were to be deducted in the year in which they were paid, if the method of accounting regularly employed in keeping the books of the taxpayer and on the basis of which the return was required to be made was the actual receipts and disbursements basis; and, in the alternative, taxes might be deducted in the year in which the liability accrued where the method of accounting employed by the taxpayer in keeping his books, and on the basis of which his return was required to be made, was the accrual basis.

The system thus adopted in 1918 has been continued, without substantial change, in the Revenue Act of 1921 (Sections 205 and 212 (a)), Act of November 23, 1921, Chap. 136, 42 Stat. 227, 232, 237,

and in the Revenue Act of June 2, 1924 (Sections 200(d) and 212(a), Chap. 234, 43 Stat. 253, 254, 267); and, since the enactment of the Revenue Act of 1918, the regulations issued by the Treasury Department conformed to these principles. (Regulations 45, Articles 21, 22, 23, 24, and 111.)

The statute contemplates, and the regulations have always required, consistency.

Under Article 23, Regulations 45, it was said:

> A method of accounting will not, however, be regarded as clearly reflecting income unless all items of gross income and all deductions are treated with reasonable consistency.

Montgomery, Income Tax Procedure, 1925 Ed., page 497, contains the following:

> Shortly stated, taxpayers must keep their accounts on a uniform basis—cash or accrual. They must avoid a " mixed " system.

The principle of consistency in the method or basis of keeping accounts and dealing with items of income and expense has been consistently followed. *Mutual Benefit Insurance Co.* v. *Herold,* 198 Fed. 199, 215; *United States* v. *Christine Oil & Gas Co.,* 269 Fed. 458, 459; *Maryland Casualty Co.* v. *United States,* 52 Ct. Cls. 201, 212.

The necessity for consistent treatment of all items on either one basis or the other was further developed in *United States v. Anderson, supra.*

In the case at bar, the executors kept their accounts on a receipts and disbursements basis. At

least, it appears they made their return on that basis, and as the law required them to make the return in accordance with the method of accounting adopted by them in keeping their books, it must be assumed that the basis used in the return was the basis on which their accounts were kept. If the findings are incomplete on this point, it must be resolved against the appellees, as the burden was on them, and they can not recover unless the findings affirmatively show that they kept their accounts and made their return on the accrual basis. *United States* v. *Anderson, supra.*

As the return disclosed income actually received, as distinguished from income accrued, the deductions were necessarily items actually paid, as distinguished from liabilities accrued.

The Federal estate tax was not paid in 1919, and consequently is not a deductible item against the income of that year, in a return on the "R" basis.

II

THE DECISION IN UNITED STATES *v.* WOODWARD (256 U. S. 632), PROPERLY UNDERSTOOD, DOES NOT SUPPORT THE POSITION OF THE APPELLEES RESPECTING THE DEDUCTION OF THE FEDERAL ESTATE TAX

The *Woodward case* has been misunderstood. The claim that it supported the view that a tax, merely because it is a tax, cannot constitute an accrued liability until the date of payment arrives, was disposed of in *United States* v. *Anderson, supra,* decided January 4, 1926.

Now it is cited as authority for the proposition that in computing net taxable income under the Revenue Act of 1918 a tax is deductible in the year in which it accrued as a liability, or in the year in which it was paid, without regard to the taxpayer's accounting methods or to whether his return was on an accrual or on a receipts and disbursements basis.

Such misunderstanding as has existed respecting the *Woodward case* has been brought about by the manner in which that case was presented to the Court.

Woodward died December 15, 1917. The Federal estate tax became due December 15, 1918. It was paid by his executors on February 8, 1919. The principal controversy in that case was whether the Federal estate tax was deductible in computing net taxable income. The year in which the deduction could be taken, if the tax was deductible at all, was given scant consideration. The case arose under the very statute we are considering. There is nothing in the record in the *Woodward case* from which it may be ascertained whether the executors kept their accounts on an accrual basis or on a receipts and disbursements basis, and there is nothing in the Record which shows whether their return for 1918 was made on a receipts and disbursement basis or on an accrual basis other than the statement that they filed a return of income "received." The executors claimed the deduction as against income for 1918, and it was allowed to

them in that year as the result of the decision of this Court. Nowhere in the briefs for the United States or for the taxpayer is any mention made of Section 212(b) of the Revenue Act of 1918, which prescribed that the income should be computed in accordance with the method of accounting regularly employed in keeping the books of the taxpayer.

At the top of page 76 of the Government's brief in the *Woodward case* we find the vital provisions of Section 212(b) omitted and stars inserted. In no place, in no brief, was the attention of the Court called to Section 200 of the Revenue Act of 1918, which provided that the terms "paid or accrued" or "paid or incurred" "shall be construed according to the method of accounting upon the basis of which the net income is computed under section 212." This provision does appear in the appendix to the Government's brief, at the top of page 75, but buried among other statutes.

The United States seems to have presented that case on the theory that the provisions of Section 214(a), which allowed the deduction of "taxes paid or accrued within the taxable year," gave to the taxpayer the privilege of deducting in any year a tax which was either accrued or paid in that year, without regard to any other consideration.

The point which absorbed the attention of counsel in the *Woodward case* was whether a Federal estate tax was properly deductible, with the result

that proper attention was not given to the question of the year in which the deduction could be taken; and the provision of the 1918 Act, which allowed the deduction of taxes " paid or accrued " in the taxable year, *depending upon whether the taxpayer's accounts were kept and return made on the receipts and disbursements basis or on the accrual basis,* was completely ignored and never brought to the attention of the Court. The point that the Court could not determine in what year the estate tax was deductible without knowing on what basis the taxpayer kept his books and made his return was not suggested by counsel on either side. Forty-six pages of the Government's brief was given up to the question of whether a Federal estate tax is deductible at all. Pages 47–48 of the Government's brief dealt with the question of the year in which the deduction was to be taken. This extract, printed in an appendix to this brief (Appendix A), shows that counsel assumed that the Federal estate tax could be deducted in 1918 if it either accrued or was paid in that year, without regard to other considerations.

The brief for the taxpayers dealt very gingerly with the problem. After referring to the provision in Section 214, that a deduction may be taken for taxes paid or accrued, the taxpayers' brief disposed of the question by this statement (p. 15):

> The decedent died December 15, 1917, and this tax was due and payable, or accrued,

December 15, 1918, and was paid by the executors February 8, 1919.

In its opinion, the Court refers to Section 214, making express provision for the deduction of "taxes paid or accrued within the taxable year." The concluding paragraph of the opinion is (p. 635):

> Here the estate tax not only "accrued," which means became due, during the taxable year of 1918, but it was paid before the income for that year was returned or required to be returned.

It is evident from the opinion that the Court did not have called to its attention Section 212 (b) or Section 200 of the Revenue Act of 1918, the consideration and application of which was vital, in order to determine in what year the deduction was allowable.

If, as a matter of fact, the executors in the *Woodward case* kept their accounts and made their returns on the receipts and disbursements basis, they were not entitled to the deduction of the Federal estate tax in the year 1918, because it was not paid until 1919. On the other hand, if they kept their accounts and made their return on an accrual basis, the deduction was properly allowable in computing net taxable income for the year 1918, because the Federal estate tax fell due in 1918, and, as was pointed out in the presentation of the case of *United States* v. *Anderson, supra,* liability for a Federal estate tax may properly be treated as accrued in the year in which the tax is payable, be-

cause, owing to the uncertain factors attending the determination of the amount, an earlier accurate estimate is not usually possible.

This discussion of the *Woodward case* makes it obvious, we believe, that the decision should not be considered authority for the proposition that a Federal estate tax is deductible either in the year in which the liability for it accrued or in the year in which it was paid, regardless of the basis on which the taxpayer's books were kept or his return made.

III

THE TEXAS INHERITANCE TAX IS NOT DEDUCTIBLE BY THE EXECUTORS FROM THE GROSS INCOME OF THE ESTATE, BUT IS A DEDUCTION WHICH SHOULD BE TAKEN BY THE LEGATEES IN THEIR INDIVIDUAL RETURNS

This subject has recently been dealt with at length in the case of *Keith* v. *Johnson*, No. 295, October Term, 1925, argued January 6, 1926, and not yet decided. We are not disposed to burden the Court by going over the same ground in this case. *Keith* v. *Johnson* involved the question whether the New York inheritance tax is deductible by the executors or by the legatees or distributees. The Texas statute and the New York statute are not unlike.

The Texas statute is set forth at length in an appendix to this brief (Appendix B). Under it, the inheritance tax is not upon the estate as a whole, but upon each individual legacy or distributive

share, and the amount of the tax on each legacy or share depends upon the size of the legacy or share and the relationship of the beneficiary to the decedent. While the payment is required to be made by the executor or administrator, he is making the payment for and on account of the legatee or heir and out of the distributee's share of the estate, and he is required to deduct the amount paid from each share as he distributes it. In case any refund is eventually made by the State, on account of the payment of an excessive inheritance tax, the refund is paid to the distributee, who has been charged with the excessive amount. If there be any case where the nature of an inheritance tax is such that the right to take the deduction belongs to the legatees or distributees, rather than to the executors or administrators, the Texas law presents it.

The deduction of a tax paid should be taken by the person on whom the burden of that tax has fallen, and by whom, in reality, it has been paid. The executors who pay the Texas inheritance tax are paying it for the account of and in discharge of a liability against the individual distributive shares. The income of an estate pending administration does not necessarily belong to the legatees in the proportions in which they take shares of the body of the estate, and to allow the deduction against gross income of the executors pending administration does not always give the benefit of the deduction to those upon whom the burden of the inheritance tax has fallen.

Some consideration should be given to the construction of the Revenue Acts by the officers charged with their enforcement. For years past the Treasury Department has consistently held that State inheritance taxes, imposed on the right to receive and computed on each separate legacy or distributive share, are deductible by the heir or legatee and not by the estate.

Regulations 65, Article 134.
Regulations 62, Article 134.
Regulations 45, Article 134.

Texas has been consistently classified by the Department among the States whose inheritance taxes are deductible by the distributees.

In the case of *Keith* v. *Johnson,* now under advisement, the situation was complicated by decisions of the courts of the State of New York, construing statutes of their own State, and the contention was made by the taxpayer that this Court is bound by the decisions of the New York courts with respect to the nature of the inheritance tax in that State.

No such difficulty exists in the Texas case. No Texas decisions have been pointed out which prevent this Court from forming its own opinion with respect to the nature of the Texas inheritance tax.

If *Keith* v. *Johnson* is decided in favor of the Collector, it will follow, necessarily, that, in the present case, the amount of the Texas inheritance tax was not a deduction to be taken by the executors.

If *Keith* v. *Johnson* is decided in favor of the taxpayer, and the decision proceeds on the theory that this Court is bound by the decisions of the New York courts, it will not follow that the Texas question must be decided against the United States.

CONCLUSION

It seems clear that the executors are not entitled to deduct the Federal estate tax from their gross income for the year 1919. The Texas inheritance tax, if deductible at all, was deductible from gross income for the year 1919.

The proper answer to the question involving the Texas inheritance tax law no doubt will be apparent when the decision in *Keith* v. *Johnson* is rendered.

Respectfully submitted.

William D. Mitchell,
Solicitor General.

A. W. Gregg,
Solicitor of Internal Revenue.

T. H. Lewis, Jr.,
Special Attorney, Internal Revenue.

February, 1926.

APPENDIX A

[Extract from Government's brief in Woodward Case]

XIV

In this case, the estate tax accrued in 1917 and was paid in 1919. Hence, if otherwise deductible, it could not, by the very terms of the act, be deducted from the income for 1918.

Regardless of whether the argument thus far made is sound or unsound, the judgment in this case ought not to be affirmed. If the estate tax is a tax which Congress intended should be deducted from the income of the estate, in order to be deducted it must come within the class of taxes described in the act. The only taxes allowed to be deducted are: "Taxes paid or accrued within the taxable year." The tax in question is a death duty. A death duty accrues at the moment of the death, which is the occasion for its imposition. This was expressly decided in *Hertz* v. *Woodman,* 218 U.S 205, where, in speaking of an inheritance or succession tax imposed by the act of 1898, Mr. Justice Lurton said:

> But the liability for the payment of the tax exacted under section 29 of the act of June 13, 1898, accrued or arose the moment the right of succession by death passed to the defendants in error, and the occurrence of no other fact or event was essential to the imposition of a liability for the statutory tax upon the interest thus acquired. (Id., p. 220.)

In this case, this tax, which accrued in December, 1917, was not paid until February, 1919. To be deductible, the act requires that it must either have accrued or been paid during the year for which the income from which it is deducted is taxed. The utmost that can be claimed, therefore, is that it is a tax which was deductible from the income of either 1917 or 1919. It is sought, however, to deduct it from the income of 1918. It neither accrued nor was paid during that year, and hence, in no possible view of the case, is it deductible.

Appendix B

[Vernon's Sayles' Texas Civil Statutes 1914, Vol. 4]

Article 7487. *Property subject to the tax.*—All property within the jurisdiction of this state, real or personal, corporeal or incorporeal, and any interest therein, whether belonging to inhabitants of this state or not, which shall pass absolutely or in trust by will, or by the laws of descent of this or any other state, or by deed, grant, sale or gift made or intended to take effect in possession or enjoyment after the death of the grantor or donor, shall upon passing to or for the use of any person except the father, mother, husband, wife or direct lineal descendants of the testator, intestate, grantor or donor, or any public corporation or charitable, educational or religious organization within this state when such bequest, gift or devise is to be used for charitable, educational or religious purposes within this state, be subject to a tax for the benefit of the state, as follows:

1. If passing to or for the use of a lineal ascendant or a brother or sister, or a lineal descendant of a brother or sister, the tax shall be two per cent on any value in excess of two thousand dollars, and not exceeding ten thousand dollars; two and one-half per cent of any value in excess of ten thousand dollars, and not exceeding twenty-five thousand dollars; three per cent on any value in excess of twenty-five thousand dollars, and not exceeding fifty thousand dolars; three and one-half per cent on any value in excess of fifty thousand dollars, and not exceeding one hundred thousand dollars; four per cent on any value in excess of one hundred thousand dollars, and not exceeding five hundred thousand dollars; and five per cent on any value in excess of five hundred thousand dollars.

2. If passing to or for the use of an uncle or aunt, or a lineal descendant of an uncle or aunt of the decedent, the tax shall be three per cent on any value in excess of one thousand dollars, and not exceeding ten thousand dollars; four per cent on any value in excess of ten thousand dollars, and not exceeding twenty-five thousand dollars; five per cent on any value in excess of twenty-five thousand dollars, and not exceeding fifty thousand dollars; six per cent on any value in excess of fifty thousand dollars, and not exceeding one hundred thousand dollars; seven per cent on any value in excess of one hundred thousand dollars, and not exceeding five hundred thousand dollars; and eight per cent on any value in excess of five hundred thousand dollars.

3. If passing to or for the use of any other person, natural or artificial, the tax shall be four per

cent of any value in excess of five hundred dollars, and not exceeding ten thousand dollars; five and one-half per cent on any value in excess of ten thousand dollars, and not exceeding twenty-five thousand dollars; seven per cent on any value in excess of twenty-five thousand dollars, and not exceeding fifty thousand dollars; eight and one-half per cent on any value in excess of fifty thousand dollars, and not exceeding one hundred thousand dollars; ten per cent on any value in excess of one hundred thousand dollars, and not exceeding five hundred thousand dollars, and twelve per cent on any value in excess of five hundred thousand dollars. (Acts 1907, p. 496, sec. 1.)

ART. 7488. *Property passing in two or more estates.*—If the property passing as aforesaid shall be divided into two or more estates, as an estate for years or for life and a remainder, the tax shall be levied on each estate or interest separately according to the value of the same at the death of the decedent. The value of estates for years, estates for life, remainders and annuities shall be determined by the "Actuaries' Combined Experience Tables," at four per cent compound interest.

ART. 7493. *County judge to regulate tax.*—Immediately upon the filing of the report of the appraisement, the county judge shall calculate and determine the amount of tax due on such propperty under this chapter, and shall in writing certify such amount to the collector of taxes, to the executor, administrator, or trustee, and to the person to whom or for whose use the property passes. Said tax shall be a lien upon such property from the death of the decedent until paid, and shall bear interest from such death until paid, unless payment

shall be made within six months after such death, in which case no interest shall be charged.

Art. 7494. *Property withheld until tax paid.*—If such property be in the form of money, the executor, administrator, or trustee shall deduct the amount of the tax therefrom before paying it to the party entitled thereto; if it be not in the form of money, he shall withhold the property until the payment by such party of the amount of tax; in any case the executor, administrator, or trustee shall be liable for the amount of the tax and shall have the right, in case of neglect or refusal after due notice of the party entitled to the property to pay such amount, to sell, at public sale, after due notice to such party, the property, or so much thereof as may be necessary. Out of the sum realized on such sale, the executor, administrator or trustee shall deduct the amount of the tax and the expenses of the sale, and shall pay the balance to the party entitled thereto.

Art. 7495. *Tax charged on real estate, when.*—Whenever any legacy subject to said tax shall be charged upon or payable out of real estate, the heir or devisee, before paying the legacy, shall deduct the amount of the tax therefrom, and pay the amount so deducted to the executor, administrator or trustee; the amount of the tax shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the executor or trustee in the same manner as the payment of the legacy itself could be enforced.

Art. 7496. *Tax paid, when.*—All taxes received under this act by any executor, administrator or trustee, shall be paid by him within thirty days thereafter to the collector of taxes of the county

whose county court has jurisdiction of the estate of the decedent. Upon such payment, the collector shall make duplicate receipts thereof; he shall deliver one to the party making payment, the other he shall send to the comptroller of public accounts, who shall charge the collector with the amount thereof, and shall countersign and affix his seal of office to such receipt and transmit same to the party making payment.

ART. 7497. *Collector to sue for, when.*—In case such tax shall not be paid to the collector of taxes within six months after the county judge has notified the amount thereof as hereinbefore provided, the collector shall commence an action to recover the amount of such tax against the executor, administrator or trustee, and the party to whom or for whose use the property has passed; provided, that the county judge may by certificate to the collector extend such time of payment whenever the circumstances of the case require.

ART. 7500. *Tax refunded, when.*—Whenever any debts shall be proven against the estate of a decedent after the distribution of property on which the tax has been paid, and a refund is made by the distributee, a due proportion of the tax so paid shall be repaid to him by the executor, administrator or trustee, if still his hands, or by the collector of taxes, if it has been paid to him. The collector shall pay such sums upon the order of the county judge out of any money in his possession under this law; and the comptroller of public accounts shall credit the collector with all sums so paid out by him.